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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,573	10/15/2003	Edward J. Seppi		7129

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VARIAN MEDICAL SYSTEMS TECHNOLOGIES, INC.
c/o BINGHAM MCCUTCHEN LLP
THREE EMBARCADERO CENTER
SAN FRANCISCO, CA 94111-4067

EXAMINER

YUN, JURIE

ART UNIT	PAPER NUMBER
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2882

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/687,573

Applicant(s)

SEPPI ET AL.

Examiner

Jurie Yun

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-13,21-25,27-34 and 39-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-13,21-25,27-34 and 39-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

1. The amendment filed 12/15/06 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 6-13, 21-25, 27-34, 39-42, and 46-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Besson (USPN 6,950,493 B2).
4. With respect to claims 1, 21, and 39, Besson discloses an apparatus for use in a radiation procedure, comprising: a radiation filter (Fig. 2, 150) having a first portion (152) and a second portion (154), the first and the second portions forming a layer for filtering radiation impinging thereon; wherein the first portion is made from a first X-ray filtering material, and the second portion is made from a second X-ray filtering material (column 9, lines 45-60 & column 11, lines 21-28); a structure (112) having a cavity, the radiation filter (150) in operative association with the structure (via control unit, 110); and a disk located within the cavity, the disk having a first target material and a second target material (column 21, lines 52-57). The first and the second filter factor is applied automatically using a machine (control unit, 110 controls motor, 156). Besson does not specifically disclose the first target material corresponds with the first portion of the radiation filter, and the second target material corresponds with the second portion of the radiation filter. Besson does imply this, however, at column 47, lines 11-38. It

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would have been obvious to one of ordinary skill in the art at the time the invention was made that this is done by Besson, to produce the desired spectrum, depending on the application being done, to obtain optimal imaging results. All X-ray system applications which include a filter take into account the target material which is being used, which determines the wavelength of X-rays generated, and the type of filter being used, to obtain the desired spectrum, which would be determined by the application being done, to obtain the best imaging results possible.

5. With respect to claim 2, Besson discloses the first and the second target materials (Fig. 28A, 2702 & 2704) are parts of a radiation source (Fig. 28B, 2802), and the apparatus further comprises the radiation source.

6. With respect to claim 3, Besson discloses a gantry to which the radiation source is secured (column 3, lines 53-54).

7. With respect to claim 6, Besson discloses the radiation source comprises an anode that includes a rare earth element, a platinum group metal, or combination thereof (column 21, lines 52-57).

8. With respect to claim 7, Besson discloses the radiation source comprises a voltage generator (column 13, lines 59-60).

9. With respect to claim 8, Besson discloses a switching element coupled to the voltage generator, the switching element configured to modulate the voltage generated by the voltage generator (column 35, lines 66+).

10. With respect to claim 9, Besson discloses an imager (114) for generating image data in response to radiation that has been filtered by the layer.

11. With respect to claims 10 and 29-33, Besson discloses the imager has a first image element for generating a first image data in response to radiation that has been filtered by the first portion of the radiation filter, and a second image element for generating a second image data in response to radiation that has been filtered by the second portion of the radiation filter (column 4, lines 39-64).

12. With respect to claim 11, Besson discloses a gantry, wherein the imager and the radiation filter are secured to the gantry (column 3, lines 53-54).

13. With respect to claim 12, Besson discloses the imager (114) is coupled to a support structure (128) for supporting an object (116) to which filtered radiation (132) is directed.

14. With respect to claims 13, 34, and 42, Besson discloses either or both of the first and second X-ray filtering materials are selected from the group consisting of aluminum, copper, and molybdenum (column 21, Table 1).

15. With respect to claims 22 and 23, Besson discloses the first filter factor is applied by placing a first filter into the X-ray radiation, and the second filter factor is applied by placing a second filter into the X-ray radiation (column 9, lines 45-60).

16. With respect to claim 24, Besson discloses the first filter factor has a same filtering characteristic as the second filter factor (column 9, lines 45-60).

17. With respect to claim 25, Besson discloses the first filter factor is different from the second filter factor (column 9, lines 45-60).

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18. With respect to claim 27, Besson discloses the first filter factor and the second filter factor are applied by placing a first filter and a second filter, respectively, into the first and second X-ray radiation (column 9, lines 45-60 & column 47, lines 11-38).

19. With respect to claims 28 and 40, Besson discloses the first filter (Fig. 2, 152) and the second filter (154) are secured to a rotatable structure (filter 150 is wheel-shaped and rotates).

20. With respect to claim 41, Besson discloses the positioner comprises a motor (156).

21. With respect to claim 46, Besson discloses an electron gun (Fig. 26, 2604) for sending electrons (2606) towards the first or the second target material (2608).

22. With respect to claims 47-50, Besson discloses an electron deflector for changing a path of the electrons; wherein the electron deflector comprises an electromagnetic field generator; wherein the electron deflector comprises a magnetic field generator; wherein the electron deflector physically deflects the electrons (column 45, lines 55+).

23. With respect to claim 51, Besson discloses a gantry to which the structure is secured (column 3, lines 53-54).

24. With respect to claims 52 and 53, Besson discloses the structure is part of a MRI (column 60, line 6) or PET machine (column 59, lines 61-62).

25. With respect to claim 54, Besson discloses the first x-ray filtering material comprises a k-edge filter (column 21, lines 16-20).

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26. With respect to claim 55, Besson discloses the first x-ray filtering material has a x-ray transmission window that is above a k-edge, and the second x-ray filtering material has a x-ray transmission window that is below the k-edge (column 32, lines 25-27).

27. Claims 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Besson (USPN 6,950,493 B2) as applied to claim 1 above, and further in view of Seki et al. (USPN 3,610,984).

28. With respect to claims 43-45, Besson does not specifically disclose the first target material forms a ring configuration; the first target material and the second target material are positioned concentrically relative to each other; and the first target material and the second target material are positioned relative to each other in a side-by-side configuration. Seki et al. disclose the first target material forms a ring configuration; the first target material and the second target material are positioned concentrically relative to each other (column 3, line 33); and the first target material and the second target material are positioned relative to each other in a side-by-side configuration (see Figs. 3-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first and second target materials of Besson to form a ring configuration, wherein the first target material and the second target material are positioned concentrically relative to each other; and the first target material and the second target material are positioned relative to each other in a side-by-side

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configuration, to form a more compact anode, resulting in a smaller and lighter X-ray source.

Response to Arguments

29. Applicant's arguments filed 12/15/06 have been fully considered but they are not persuasive. Applicants argue that "the cited passage of Besson merely discloses obtaining a spectrum using x-ray techniques, filtration, and anode target material. There is nothing in the cited passage of Besson that discloses or suggests a first filter portion/factor and a second filter portion/factor that correspond with a first target material/radiation and a second target material/radiation, respectively." This is not agreed to. It is pointed out that Besson teaches various embodiments for obtaining dynamic multi-spectral CT imaging, including dual target anode configurations (e.g. column 21, lines 52-57) and use of different filter elements (e.g. column 9, lines 45-60). Specifically, Besson teaches (column 10, lines 60-65):

The spectrum of X-ray radiation on paths 132 passing through section 124 may be varied according to different techniques for operating a given X-ray source 112, so long as there is sufficient response time to maintain an acceptable scan rate of body 116. For example, the operating technique under control of computing equipment 122 may vary X-ray tube voltage as a difference in voltage between the anode and cathode of a conventional X-ray tube to emit different spectra. Other such techniques are to vary X-ray tube electron beam current, the X-ray tube target material selection, the X-ray focal-spot geometry, and/or the X-ray filtering by filter 152 or other filters in paths 132. These techniques may be employed individually or cooperatively at the same time.

Besson teaches both X-ray tube target material selection and X-ray filtering by filter and that "these techniques may be employed individually or cooperatively at the same time."

It is known to those of ordinary skill in the art that the means to emit different spectra are numerous and vary depending on the application being done. And, it would have

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been obvious to one of ordinary skill in the art based on the teachings of Besson to use a specific filter in conjunction with a specific target material.

Applicants also argue, "Also, according to the Office Action, in order to obtain a desired spectrum, one would take into account the target material and the type of filter being used. However, Applicant respectfully submits that even if this were true, it does not automatically mean that the system disclosed in Besson has different filter portions corresponding to different respective target materials/radiation. This is because, a desired spectrum may be obtained, for example, with a null filter (no filter), with different target materials that are used with the same filter, or with different filters that are used with the same target material, none of which would require different filter portions to correspond with respective different target materials/radiation. As such, a mere disclosure of filtration and target material does not automatically necessitate a finding that the reference suggests first and second filter portions/factors that correspond to first and second target materials/radiation, respectively."

Applicant's argument that "a mere disclosure of filtration and target material does not automatically necessitate a finding that the reference suggests first and second filter portions/factors that correspond to first and second target materials/radiation, respectively" - is not persuasive. Rather, it is thought that since the specific means to vary the spectrum are taught, as well as the fact that the various embodiments could be used together, it would have been obvious to one of ordinary skill in the art to combine use of a specific target with a specific filter, to control the desired characteristics depending on the application being done. Thus, this rejection is maintained.

Conclusion

30. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jurie Yun whose telephone number is 571 272-2497. The examiner can normally be reached on Monday-Friday 8:30-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on 571 272-2490. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

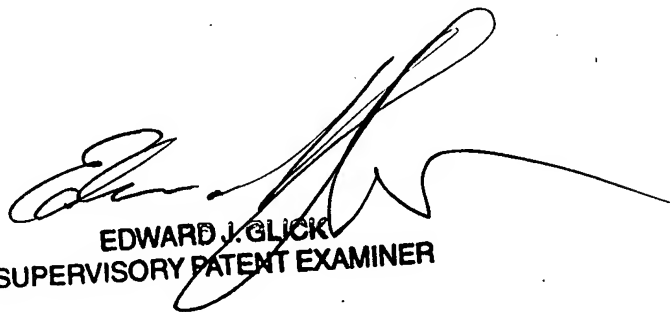
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jurie Yun
Examiner
Art Unit 2882

February 1, 2007



EDWARD J. GLICK
SUPERVISORY PATENT EXAMINER